

On May 26, 1999 appellant, then a 36-year-old mail handler, sustained an injury in the performance of duty when she bent over a postal container, picked up a heavy tray of letters, twisted and felt lower back pain. The Office accepted her claim for lumbosacral sprain.

Appellant later returned to work six hours a day as a modified mail handler. On April 21, 2003 the Office determined that her actual wages in that modified position fairly and reasonably represented her wage-earning capacity. It paid compensation for partial disability.

Appellant filed a claim alleging a recurrence of total disability beginning January 28, 2008. She explained that after she returned to work in her modified position her condition was manageable. Appellant still had chronic pain around the sacroiliac, left and right, with sciatic pain down the right leg. Her right ankle had no sensation, which was a permanent condition. Appellant's pelvic pain and stiffness was moderate but much worse in colder months. "I have gone to physical therapy a couple of times since my return to work at six hours a day."

Appellant explained that her modified job required her to walk the building picking up mail and tear-ups. The utility cart she pushed was heavy and did not roll well, forcing her to use her upper back and arms. "Original injury was to lumbar area and leaves me with no counter balance." Appellant described how her condition had changed:

"My condition has been deteriorating this past year. I now have sharp nerve pain sporadically along bottom of right foot. Pain in upper back and neck. Radiating pain down both arms with a burning and stinging sensation. Right arm has lost strength to grip or hold anything of weight. I believe the modified job is further exacerbating my condition. I am requesting to expand present injury based on Dr. Hansraj's report of Feb. 11, 2008."

On January 28, 2008 Dr. Kenneth K. Hansraj, an orthopedic spine surgeon, treated appellant for an emergency evaluation of excruciating pain. Appellant was unable to perform activities of daily living; lifting her arms put her in severe pain. Dr. Hansraj found she was temporarily totally disabled. On February 11, 2008 he advised that he was treating appellant for cervical and lumbar spondylosis. Dr. Hansraj stated that her current cervical pain was related to her May 26, 1999 employment injury.

A February 13, 2008 magnetic resonance imaging (MRI) scan of the lumbar spine found multilevel degenerative disc disease with herniation and resultant narrowing of the central canal or neural foramina; spondylosis; facet joint arthropathy and dextroscoliosis of the lumbar spine. Dr. Hansraj advised appellant that she had a foraminal disc right side at L5-S1, a foraminal disc left side at L4-5 and degenerative disc disease at L3-S1.

On July 3, 2008 the Office denied modification of its prior wage-earning capacity determination. It found that Dr. Hansraj's reports were not sufficient to establish a material worsening of the accepted work-related condition.

Appellant, through her attorney, requested reconsideration. Counsel argued that the Office failed to accept all the medical conditions caused by the May 26, 1999 work incident. He contented that appellant's recurrence of total disability on January 28, 2008 was a result of medical conditions casually related to that incident. Counsel provided evidence from Dr. Hansraj dated February 9, 2009 and submitted medical reports and diagnostic tests.

On February 9, 2009 Dr. Hansraj stated that appellant had been under his care since 1999 and that the progressive debilitation of her neck and back was well documented. He diagnosed

cervical spondylosis with neck pain that radiates to the right and left scapula and down the right arm especially. Dr. Hansraj also diagnosed lumbar spondylosis with back pain that radiates down the right leg, predominantly and periodically down the left. “I believe these injuries are all related to her work employment. The documentation is throughout the chart.” Dr. Hansraj noted that appellant did not have any other injuries that would cause her back or neck problems and that she was never treated by any other party for neck or back injuries. “The conditions described above were caused by the injury described, since the patient had no symptoms before this.”

In a decision dated September 18, 2009, the Office reviewed the merits of appellant’s claim and denied modification of its July 3, 2008 decision. It found that she did not establish that a modification of its prior wage-earning capacity determination was warranted. The Office also found that the medical evidence did not support acceptance of appellant’s various medical conditions as a result of the May 26, 2009 employment injury.

On appeal, appellant’s representative contends that the reconsideration request established all conditions outlined in the medical evidence and that appellant’s recurrence of disability was compensable.

LEGAL PRECEDENT -- ISSUE 1

The Federal Employees’ Compensation Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of her duty.¹ A claimant seeking benefits under the Act has the burden of proof to establish the essential elements of her claim by the weight of the evidence,² including that she sustained an injury in the performance of duty and that any specific condition or disability for work for which she claims compensation is causally related to that employment injury.³

Causal relationship is a medical issue,⁴ and the medical evidence generally required to establish causal relationship is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence that includes a physician’s rationalized opinion on whether there is a causal relationship between the claimant’s diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant,⁵ must be one of reasonable medical certainty,⁶

¹ 5 U.S.C. § 8102(a).

² *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Mary J. Briggs*, 37 ECAB 578 (1986).

⁵ *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

⁶ *See Morris Scanlon*, 11 ECAB 384, 385 (1960).

and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment.⁷

Medical conclusions unsupported by rationale are of little probative value.⁸ Medical conclusions based on inaccurate or incomplete histories are also of little probative value.⁹

ANALYSIS -- ISSUE 1

Appellant sustained an injury in the performance of duty on May 26, 1999 when she bent over a postal container and picked up a heavy tray of letters. The Office accepted her claim for lumbosacral sprain. Appellant argued that the Office must expand its acceptance to include every medical condition outlined in the medical evidence. She bears the burden of proof to establish the element of causal relationship for any medical condition not accepted by the Office.

In a February 9, 2009 report, Dr. Hansraj, the attending orthopedic spine surgeon, diagnosed cervical and lumbar spondylosis and stated that he believed these injuries were related to appellant's federal employment. "The documentation is throughout the chart." There are many medical reports in the record and many diagnostic tests. Appellant received medical attention for a number of medical conditions. This fact alone, is no proof that these conditions are the result of the May 26, 1999 injury, nor is causal relationship apparent from the mere fact that appellant suffered progressive debilitation over the years.

Dr. Hansraj stated that appellant did not have any other injuries that would cause her back or neck problems. He did not explain how her problems could be caused by traumatic injury or whether it was possible she could have developed spondylosis independently, in the absence of any incident at work. Dr. Hansraj added: "The conditions described above [cervical and lumbar spondylosis] were caused by the injury described, since the patient had no symptoms before this." The Board has held that when a physician concludes that a condition is causally related to an employment because the employee was asymptomatic before the employment injury, the opinion is insufficient, without supporting medical rationale, to establish causal relationship.¹⁰ Temporal relationships, such as Dr. Hansraj noted, do not establish causal relationships. Dr. Hansraj must soundly explain, from an orthopedic point of view, how the May 26, 1999 incident caused appellant's current lumbar or cervical spondylosis and he must support his opinion with specific references to clinical and diagnostic findings.

The Board has reviewed the extensive medical record and finds that appellant has not met her burden of proof to establish the critical element of causal relationship for the medical

⁷ See *William E. Enright*, 31 ECAB 426, 430 (1980).

⁸ *Ceferino L. Gonzales*, 32 ECAB 1591 (1981); *George Randolph Taylor*, 6 ECAB 968 (1954).

⁹ *James A. Wyrick*, 31 ECAB 1805 (1980) (physician's report was entitled to little probative value because the history was both inaccurate and incomplete). See generally *Melvina Jackson*, 38 ECAB 443, 450 (1987) (addressing factors that bear on the probative value of medical opinions).

¹⁰ *Thomas D. Petrylak*, 39 ECAB 276 (1987).

conditions she currently claims compensation. Dr. Hansraj's opinion is not well rationalized and is of diminished probative value.

LEGAL PRECEDENT -- ISSUE 2

As noted, the Act provides compensation for the disability of an employee resulting from personal injury sustained while in the performance of her duty.¹¹ "Disability" means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.¹²

In determining compensation for partial disability, the wage-earning capacity of an employee is determined by the employee's actual earnings if the employee's actual earnings fairly and reasonably represent her wage-earning capacity."¹³ Generally, wages actually earned are the best measure of a wage-earning capacity and in the absence of evidence showing that they do not fairly and reasonably represent the injured employee's wage-earning capacity must be accepted as such measure.¹⁴

Once the loss of wage-earning capacity is determined, a modification of such determination is not warranted unless there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was, in fact, erroneous. The burden of proof is on the party attempting to show modification of the award.¹⁵

ANALYSIS -- ISSUE 2

Once the Office issues a formal decision on wage-earning capacity, the rating should be left in place until the claimant requests resumption of compensation for total wage loss, as with a recurrence claim, for more than a limited period of disability, in which instance the Office will need to evaluate the request according to the customary criteria for modifying a formal wage-earning capacity determination.¹⁶ The legal standard relating to recurrences is therefore immaterial.

The Office issued a formal decision on appellant's wage-earning capacity on April 21, 2003. When appellant filed a claim alleging a recurrence of total disability beginning January 28, 2008, she has the burden to establish a material change in the nature and extent of her injury-related condition. The Office accepted a lumbosacral sprain. Appellant's representative contends the Office must accept every medical condition outlined in the medical

¹¹ *Supra* note 1.

¹² 20 C.F.R. § 10.5(f).

¹³ 5 U.S.C. § 8115(a).

¹⁴ *Don J. Mazurek*, 46 ECAB 447 (1995).

¹⁵ *Daniel J. Boesen*, 38 ECAB 556 (1987).

¹⁶ *Katherine T. Kreger*, 55 ECAB 633 (2004); *Sharon C. Clement*, 55 ECAB 552 (2004).

evidence, but to date the Office has accepted only one. As discussed, appellant has the burden to establish that the other medical conditions for which she claims compensation. It is also her burden to establish a material change in the nature and extent of the lumbosacral sprain she sustained on May 26, 1999.

Appellant has submitted no probative medical opinion on this point. She rests her claim for compensation entirely on her attempt to establish that the Office should expand its acceptance to include the medical conditions that have caused her to become totally disabled for work. Because appellant has not established a material change in the nature and extent of her May 26, 1999 lumbosacral sprain, the Board finds that she has not met her burden to establish that modification of the Office's April 21, 2003 determination of wage-earning capacity is warranted. The Board will therefore affirm the Office's September 18, 2009 decision denying modification of its prior decision.

As to the argument of appellant's representative on appeal, appellant's reconsideration request fails to establish that the Office must expand the class of accepted conditions to include all conditions outlined in the medical evidence. Further, the Office properly handled appellant's recurrence claim as a request for modification of its April 21, 2003 wage-earning capacity decision and the Office properly denied that request.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish any of the medical conditions for which she currently claims compensation. The Board also finds that she has not met her burden to establish that modification of the Office's April 21, 2003 wage-earning capacity determination is warranted.

ORDER

IT IS HEREBY ORDERED THAT the September 18, 2009 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 7, 2010
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board